IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 1352 of 2007(J)

OS.274/2004 of PRL.MUNSIFF COURT,NEDUMANGAD

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PETITIONERS:

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1. B.K. DEEPA, AGED 37 YEARS,
   D/O.KRISHNAKUMRY AMMA, NARAYANA MANGALAM,
   THIRUCHITTOOR, VENKAVILA, IRINCHAYAM,
   ANAD VILLAGE.

2. BALAKRISHNA PILLAI, AGED 68 YEARS,
   S/O.NARAYANA PILLAI, NARAYANA MANGALAM,
   THIRUCHITTOOR, VENKAVILA, IRINCHAYAM,
   ANAD VILLAGE.

BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

RESPONDENTS:

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1. VENUGOPAL, AGED 42 YEARS,
   S/O.KRISHNA PILLAI, ASWATHY, VENKAVILA,
   ANAD VILLAGE.

2. AJITH KUMAR, AGED 35 YEARS,
   VANDANA, PLAVARA, VENKAVILA, ANAD VILLAGE.

3. RAJU, AGED 33 YEARS,
   S/O. SREEDHARA PILLAI, RESIDING AT BEENA BHAVAN,
   PLAVARA, VENKAVILA, ANAD VILLAGE.

4. BHADRAKUMAR, AGED 27 YEARS,
   S/O.KRISHNA PILLAI, RESIDING AT KRISHNA BHAVAN,
   PLAVARA, VENKAVILA, ANAD VILLAGE.

5. S.C.SUNIL, AGED 33 YEARS,
   C.V.COTTAGE, NETTA, NEDUMANGAD VILLAGE,
   NOW AT PARAYIL NADA, PASUVILAKOM, IRINCHAYAM,
   NEDUMANGAD.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.1352 OF 2007

DATED THIS THE 15th DAY OF JANUARY, 2007

JUDGMENT

Petitioners are plaintiffs in O.S.274/04 on the file of Munsiff Court, Nedumangad. Respondents are defendants. Suit was filed seeking a decree for permanent prohibitory injunction restraining respondents from trespassing into plaint 'A' and 'B' schedule properties and demolishing the boundaries or cutting the trees standing therein. Along with the suit petitioners filed I.A.1333/04, an application under order XXXIX Rule 1 of Code of Civil procedure restraining respondents from trespassing into plaint schedule properties. An exparte order of temporary injunction was granted. Petitioners filed I.A.1941/04 there after, seeking an order for implementation of the order. Respondents opposed both the applications. Under Ext.P13 common order, learned Munsiff finding that petitioners have no prima facie case and balance of convenience is not their favour dismissed the application. Petitioners challenged that order in C.M.A.13/04. Under Ext.P14, learned Sub Judge dismissed the appeal confirming Ext.P13 order passed by learned Munsiff. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned Counsel appearing for petitioners was heard.

3. Arguments of learned Counsel appearing for petitioners was that the question whether plaint 'B' schedule property belongs to Devaswom or is a puramboke land was a matter, which came up for consideration in DBA 122/04 on the file of this Court and under Ext.P16 order, this Court directed Revenue Divisional Officer to pass appropriate order in Ext.R5(d) appeal filed by petitioners and under Ext.P15 order, the Revenue Divisional Officer found that the property is a Government puramboke land and not the land belonging to Devaswom and therefore the findings under Exts.P13 and P14 are illegal and are to be set aside.

4. In an application under Order XXXIX Rule 1 of the Code, Court has to see whether petitioners have a prima facie case and whether the balance of convenience is in their favour and whether any irreparable injury will be caused, if no order as sought for is granted. Both the trial Court and appellate Court considered this aspect and found the points against petitioners. The question is whether in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India, it has to be interfered with.

5. Though it was vehemently argued that the respondents did not dispute the right and possession of petitioners over plaint 'A' schedule property and possession of plaint 'B' schedule property and

therefore the order of temporary injunction should have been granted as sought for. On going through the orders, it is clear that there is no demarcating identifiable boundaries to separate plaint 'A' and 'B' schedule properties. Therefore, it is not possible to grand an effective order in respect of plaint 'A' schedule property alone when it is lying contiguous to plaint 'B' schedule property and possession of plaint 'B' schedule property is in dispute. In such circumstances, I do not find any reason to interfere with Ext.P14 order confirming Ext.P13 order.

Learned Munsiff is directed to dispose the suit as expeditiously as possible and untrammeled by any observation in Exts.P13 or P14 order or in this judgment.

M.SASIDHARAN NAMBIAR,JUDGE

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